

CITY OF SUNNYVALE, CALIFORNIA

SUBDIVISION AGREEMENT

Tract No. XXXX

SD-XX-XX

THIS AGREEMENT, made and entered into in the City of Sunnyvale, County of Santa Clara, State of California, this ____ day of _____, 2005, by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California, hereinafter called "City" and _____, hereinafter called "Subdivider";

W I T N E S S E T H:

WHEREAS, Subdivider has heretofore filed with City a Final Subdivision Map for the subdivision of certain real property in the City of Sunnyvale, designated SD-XX-XX Tract No. _____, and has requested that the same be approved by the City Council of the City of Sunnyvale; and

WHEREAS, Subdivider, by said map, has offered for dedication to City those certain streets, ways and easements as delineated thereon; and

WHEREAS, the City Council of City has by Motion heretofore on ____ day of _____, 2005, approved said map and accepted the offers of dedication as shown thereon, and by said Motion has required as a condition precedent to the acceptance of any streets, ways or easements as shown on said map, that Subdivider agree to improve said streets and easements and make and install certain other public improvements within said Subdivision; and

WHEREAS, the approval of said Subdivision Map is conditioned upon the execution by Subdivider of this Agreement;

NOW, THEREFORE, in consideration of the approval of said Subdivision Map and the acceptance of streets and easements therein, Subdivider and City agree as follows:

A. Subdivider agrees to furnish, construct and install at Subdivider's own expense all improvements as required by Title 18 of the Sunnyvale Municipal Code, or as amended, and as shown on the City approved plans and specifications of said Subdivision.

B. Subdivider agrees that all improvements to be constructed and installed shall be performed at the expense of Subdivider, or as herein specified, and shall be performed in strict accordance with improvement plans therefore.

B-1. City reimbursement to Subdivider:

C. Subdivider agrees to furnish and deliver to City concurrently with this agreement, adequate and acceptable improvement security as required by Title 18 of the Sunnyvale Municipal Code, or as amended, in the amount of _____ dollars (\$ _____), to secure the faithful performance of furnishing, constructing

or installing all improvements required by Paragraph A above.

D. Subdivider agrees to furnish and deliver to City concurrently with this agreement, adequate and acceptable improvement security as required by Title 18 of the Sunnyvale Municipal Code, or as amended, in the amount of dollars (\$) as security for the payment to the contractor, his/her subcontractors and to all persons furnishing materials, provisions, provender, or other supplies, or equipment or teams to them and used in, upon, or about the improvements required to be furnished, constructed and installed in Paragraph A above, or for performing any work or labor of any kind in, about or upon said improvements, and for the payment of amounts due under the Unemployment Insurance Act with respect to such work or labor in connection with the furnishing, constructing, or installing said improvements, and for payment of a reasonable attorney's fee to be fixed by the court in case suit is brought by the City.

E. Subdivider agrees to repair, replace, restore, or rebuild all improvements as required by Title 18 of the Sunnyvale Municipal Code, or as amended.

F. Subdivider agrees to install and maintain all private streets, curbs, walkways, lighting systems, private sanitary sewer, water mains, and storm drains within all common and open areas, as well as continual maintenance of all landscaping and appurtenances. Adequate and acceptable maintenance security in the amount of dollars (\$) has been furnished to guarantee the above-mentioned maintenance, including repair and replacement on an emergency basis, for a period commencing from the date of this agreement until 75 percent of the units in this subdivision are sold or three years, whichever first occurs. Said security shall remain in full force and effect even though the common areas have been transferred to the Homeowners Association. If after a 15-day notice period, deficiencies are not corrected, the City shall have the right to demand that the corrections be made through the bonding company, or that funds held by financial institutions or escrow agents be released to the City. The City shall have the right to draw from and use any part of or the total of any cash deposit held by the City for the purpose of securing the performance of said maintenance.

G. Subdivider agrees that execution of this Agreement constitutes an application for connection to any and all municipal utilities serving the project.

H. Subdivider shall indemnify and hold harmless City, its officers, employees, and agents from any and all liability, damages, claims, or causes of action for injury to person or persons, or damage to property which may arise out of, or occur by reason of the performance or work in furtherance of this agreement by Subdivider, including all costs and attorney fees incurred in defending any claim arising as a result thereof.

I. Concurrently with the acceptance of this agreement, Subdivider shall furnish and deliver to City a certificate showing that Subdivider has such public liability and property damage insurance insuring Subdivider against any loss or liability of any kind or nature whatsoever which may arise during the performance of, or which may result from any of the work herein required to be done by Subdivider, including all costs of defending

any claim arising as a result thereof. Such policy shall be in an aggregate amount of at least One Million Dollars (\$1,000,000.00) for the death or injury to any person or persons in any one accident or occurrence. Certificate shall also show Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Subdivider. Said policy shall remain in full force and effect until this agreement shall be fully performed and shall state by its terms or by an endorsement thereof that said policy shall not be canceled until the City shall have at least thirty (30) days notice in writing of said cancellation.

A contractual liability endorsement shall be added to each insurance policy extending coverage to include the liability assumed in Paragraph H above. THE CITY OF SUNNYVALE MUST BE NAMED AS AN ADDITIONAL INSURED.

J. The following fees and charges have been paid:

1. Sanitary Sewer	
a. Connection	\$ _____
b. Existing Sanitary Sewer Frontage Charge	\$ <u>No Charge</u>
2. Storm Drain Connection	\$ _____
3. Water	
a. Connection	\$ _____
b. Existing Water Main Frontage Charge	\$ <u>No Charge</u>
c. Water Meters	\$ _____
d. Tapping Fee	\$ _____
4. Fire Hydrants	\$ <u>No Charge</u>
5. Inspection and/or Engineering (Charges at 7% of estimated cost of improvements)	\$ _____
6. Street Lighting System	\$ <u>No Charge</u>
7. Street Trees	\$ <u>No Charge</u>
8. Maintenance Deposit	\$ _____
9. Other: <u>Map Fees</u>	\$ _____
	\$ _____
TOTAL FEES AND CHARGES	\$ _____

K. Subdivider agrees to locate any construction yard for the storage of equipment, vehicles, supplies and materials or the preparation or fabrication thereof, to be used in connection with the installation of improvements for said subdivision or the construction of buildings, therein, in such a manner so as to cause a minimum of

inconvenience to persons living in the areas immediately adjacent to said subdivision, and to obtain the approval of the Director of Public works to the proposed location of the yard. Immediately upon completion of the final building to be constructed in the subdivision, or unit thereof, to which this agreement refers, Subdivider agrees to cease using the construction yard and to remove therefrom all supplies, materials, equipment, or vehicles being stored or kept thereon. Subdivider agrees not to use the construction yard in connection with the installation of improvements or construction of buildings in any other subdivision, or any other unit of the subdivision to which this agreement refers. City may extend the time within which the construction yard may be used or within which supplies, materials, equipment or vehicles may be stored or kept thereon if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Subdivider stating fully the grounds and facts relied upon it for such extension.

L. Subdivider agrees to perform all of the work required by Paragraph A on or before _____; provided, however, that City may extend the time within which City work and improvements shall be completed if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Subdivider stating fully the grounds and facts relied upon for such extension.

M. The Director of Public Works shall inspect all of the improvements made pursuant hereto to determine that they comply with all City regulations.

N. Subdivider agrees to keep and maintain all areas within the improved or partially improved public streets or public rights-of-way contiguous and adjacent to and within the hereinabove referenced to Subdivision, including streets being constructed and/or improved pursuant to this agreement, free and clear of all dirt, mud, sand, gravel, rocks, bricks, stones, shingles, roofing material, lumber, tool sheds, construction buildings and other similar items at all times during the improvement and construction of the improvement and all buildings and other structures within said Subdivision.

O. Concurrently with the acceptance of this Agreement, Subdivider has posted and filed with City a cash deposit in the amount of _____ dollars (\$_____) to guarantee that all areas to be improved within public streets and public rights-of-way, as required by the approved improvements plans, are properly maintained, repaired, replaced, restored and rebuilt including all concrete work, street pavement, street lighting system, storm drain system, sanitary sewer system, water main system and proper clean up and sweeping of all debris, buildings, equipment and other items. In the event Subdivider fails, neglects, or refuses to maintain said areas, City is hereby authorized to expend all or any portion of said deposit during construction and during the one year maintenance period to accomplish the above for a clean and safe project site.

P. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

Q. This Agreement shall not be assigned without the prior written consent of the

City.

R. Subdivider shall install underground utilities as required by SEC 19.38.090 of the Sunnyvale Municipal Code.

S. Articles of Incorporation and By-Laws for the non-profit corporation, hereinafter Association, to manage and maintain the common areas shall be approved by the City of Sunnyvale. A certified copy of the Articles, after filing with the Secretary of State, shall be filed with the City Clerk.

T. The Declaration of Covenants, Conditions and Restrictions (C. C. & R.'s) applicable to the property within the subdivision as approved by the City of Sunnyvale shall be filed in the office of the Recorder of Santa Clara County. A certificate of recording or other evidence of recording shall be filed with the City Clerk.

IN WITNESS WHEREOF, the City of Sunnyvale has caused this Agreement to be executed pursuant to the authority of Motion passed by the City Council of the City of Sunnyvale on the ____ day of _____, 2005, and Subdivider has caused this Agreement to be executed the day and year first above written.

CITY OF SUNNYVALE
A Municipal Corporation

By _____
Dean Chu, Mayor

APPROVED:
As to Form:

Joan A. Borger, City Attorney

SUBDIVIDER:

A California Corporation

By _____
(Name, Title)

As to Content:

Barbara Keegan, City Engineer
Assistant Director of Public Works

ATTEST:

Katherine Chappellear, City Clerk

All Subdivider signatures must be acknowledged by a Notary Public.